

Memorandum

To: Members, Planning and Zoning Commission
From: Laurence Bradley, Planning & Zoning Director
Date: January 25, 2016
Re: CAM Site Plan #15-065 – 122 Wilton Road, *Affordable Housing in Westport*

Market rate and below-market-rate housing alternatives must be provided in a community to maintain a diversity of residents of all income levels. The housing inventory in the Town of Westport includes market rate housing, below-market-rate housing, and affordable housing as defined by the Connecticut General Statutes.

Affordable Housing

Affordable Housing is defined in §8-30g of the Connecticut General Statutes as:

- a) Assisted housing- a housing development that receives financial assistance under any government program; or
- b) Set-aside development- development where not less than 30% of the dwelling units are conveyed by deed containing covenants or restrictions which require that, for at least 40 years after the initial occupation of the development, such dwelling units will be sold or rented at, or below, prices which are 30% or less of a persons or families annual income, where such income is less than or equal to 80% of the state median income or area median income, whichever is less.

For more information on affordable housing and the income guidelines for Westport, see attached memorandum *Affordable Housing as Defined in State Statutes §8-39a & §8-30g, dated 9/18/02, revised 3/16/15.*

The 2007 Plan of Conservation and Development recommends creating more affordable housing opportunities. Chapter 6, *(Create a Range of Housing Opportunities and Choices)*, includes the following goals:

- “Seek ways to expand the variety of housing choices and options of Westport in order to help meet the needs of existing and future residents while maintaining the character and integrity of the town.” Pg. 6-1
- “As Westport work towards providing more housing choices, it will do so in ways that are appropriate for the community and that protect the public health and safety. In addition, Westport will consider ways of integrating affordable, workforce and market rate housing in future projects in partnerships with public and private organizations.” Pg. 6-3
- “Require that all housing construction in Westport either provide affordable housing units or pay into an affordable housing trust fund.” Pg. 6-4
- “Consider requiring that any multi-family development provide affordable housing units.” Pg. 6-4
- “The Town should adopt an inclusionary zoning regulation requiring some percentage of units in a multi-family development to be deed restricted to affordable levels.” Pg. 6-4
- “Strategies giving priority to residents and Town employees should be established to ensure affordable housing serves the needs of Westport.” Pg 6-4

The 1997 and 1987 Town Plan of Development also encouraged enacting zoning regulations to create below-market-rate housing. Since adoption of these plans Westport has made strides to implement these recommendations as follows.

A. Local Initiatives

In 1977, the Westport Housing Authority constructed 50 elderly affordable units at 5 Canal Street. These units were some of the first affordable units within in Westport.

In the 1990's, Westport took the following significant steps to provide a variety of housing types including below-market-rate dwelling units:

- Converted the Saugatuck School to moderately priced dwelling units for older adults.
- Purchased 16 homes on Wassell Lane from the U.S. Government for low to moderate income housing.
- Adopted zoning regulations to authorize apartments that existed prior to 1959.
- Adopted a zoning regulation that allows an increase in floor area for accessory apartments for individuals over the age of 62.
- Amended §16, the Mobile Home Park regulations to allow for mobile home replacement units thereby creating a mechanism to avoid losing the existing below-market-rate housing stock if the existing mobile home units were not replaced when needed.
- Adopted §32-15, a zoning regulation that allows for Managed Residential Communities with a density bonus based on the number of affordable units provided.

In the 2000's the Westport Zoning Regulations were amended to provide additional diversity in housing types and below-market-rate dwelling units including:

- Adopted §19, Residential Affordable Housing Zone (R-AHZ), a “floating” zone applicable to public or privately owned residentially zoned property, that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes, and subsequently approved a Map Amendment to rezone property located at Wilton Road and Edge Hill Lane from Res AA to R-AHZ.
- Adopted §20, Municipal Housing Zone (MHZ), a floating zone applicable to Town-owned property and land owned by the Westport Housing Authority, that requires 100% of all dwelling units to be affordable as defined by State Statutes, and subsequently approved a Map Amendment to rezone property at Hales Court from Res AA to MHZ.
- Adopted §32-17, a zoning regulation that allows for conversion of existing buildings and/or construction of new buildings on Town-owned land for at least 50% affordable housing and 50% middle-income housing.
- Amended §19, Residential Affordable Housing Zone (R-AHZ), to modify specific provisions to encourage and promote affordable housing by making the R-AHZ regulations less risky and more workable for potential developers.
- Adopted §24A, General Business District Saugatuck (GBD/S), a floating zone applicable to public or privately owned non-residentially zoned property that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes. The Planning and Zoning Commission subsequently approved a Map Amendment to rezone property at 553, 570, 580 Riverside Avenue and 9 Ketchum Street from GBD to GBD/S and approved a Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing. A second Map Amendment was also approved by the Planning and Zoning Commission to rezone property at 12, 16, 20 Ketchum Street and 518 Riverside Avenue from GBD to GBD/S.

A Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing is currently pending.

- Adopted §32-1, a zoning regulation that allows for conversion of existing, or construction of new dwelling units applicable to public or privately owned, residentially zoned property, for Supportive Housing use requiring all units shall be affordable, and subsequently approved a development for 6 dwelling units at 10 West End Ave.
- Modified §4-5 to exempt multi-family affordable housing from the cap of 10%. Also exempt any future affordable units from being included in the cap of 10%.
- Modified §18 to allow the redevelopment and/or adaptive reuse of existing non-residential buildings on Riverside Avenue into larger sized dwelling units on lots over two-acres in size in non-residentially zone lots or residentially zoned lots that are currently have a permitted non-residential use with a minimum of 200-feet of frontage on Riverside Avenue and served by public water and public sewer and to identify it is in the public interest to preserve the existing historic scale, massing and character of the affected area. This amendment requires that a minimum of fifteen percent (15%) of the total number of market rate dwelling units shall be designated as workforce or affordable housing.
- Adopted §19A- Residential Affordable Housing Zone/Workforce (R-AHZ/W) to allow two-family and multi-family dwelling units including market rate dwelling units, affordable housing and workforce housing, subject to Special Permit/Site Plan approval on properties that are a minimum of 1-acre in size and no more than 4-acres in size; have a minimum width of 100 feet; have a lot shape that can contain a rectangle of 100 feet by 150 feet; are contiguous to or directly (on a perpendicular) across the street from a non-residential zone, with the exception of the Design Development District; have a minimum thirty (30) feet of frontage on an Arterial street; and have public water and sewer available.
- Adopted §11-2.4.12B to allow Affordable Accessory Apartments no larger than 800 SF and no larger than 25% of the floor area of the house if a deed restriction is placed on the land records stating the apartment will be rented as “affordable” for at least 10 years.
- In March 2007, the Planning and Zoning Commission again formally committed to find ways to address the existing shortage in affordable housing units in Town. An Affordable Housing subcommittee of the Planning and Zoning Commission was formed with the goal of continuing to develop regulations to promote affordable housing in Westport.
- Adopted §39A, Inclusionary Housing Overlay District (IHZ), was authored by the Planning and Zoning Commission and became effective on 12/3/10 pursuant to Amendment #619. An Overlay Zone is defined as a zoning district that encompasses one or more underlying zones and that imposes additional requirements above that required by the underlying zone(s). The IHZ regulations allow “mixed-use” development of residential and non-residential uses with a requirement that 20% of the residential units shall be owned or rented as affordable units in accordance with C.G.S. §8-30g. There are forty-six (46) properties currently eligible for rezoning to IHZ, see list prepared by Michelle Perillie revised 12/21/15, available in the file.

The Planning and Zoning Commission, in Res. #10-034, cited four (4) reasons for adopting the IHZ regulations:

1. *“The Planning and Zoning Commission finds the amendment is consistent with Westport*

Zoning Regulations.

2. *The Planning and Zoning Commission finds the amendment is consistent with the 2007 Plan of Conservation and Development.*
3. *The amendment will provide opportunities to create affordable housing units, as defined in CGS §8-30g, in Westport where there is an existing shortage.*
4. *The amendment will provide opportunities to increase the diversity in housing types.*

Following the Planning and Zoning Commission's adoption of Text Amendment #619 the amendment was appealed to the Representative Town Meeting (RTM). The RTM voted to sustain the Commission's action in December 2010. Following the RTM vote the Text Amendments were appealed to Superior Court by a Westport resident. On October 13, 2011, the Court found in favor of the Commission and did not overturn the amendment. No further appeals were taken.

- Amended §39A in April 2012, pursuant to Text Amendment #642. Planning Consultant Mel Barr obtained approval to modify §39A to reduce the required non-residential floor area from 40% to 30% in the GBD, RBD, BCD, BCD/H and DDD#2 zones, to delete the non-residential floor area requirement in the RPOD, RORD and BPD zones, and to modify the Traffic Analysis requirement to grant the Commission discretion to waive this requirement.
- Amended §39A in April 2013, pursuant to Text Amendment #660, to modify portions of §34 and §39A. The amendment was adopted in part (as modified), and denied in part. The proposed changes to §39A were denied and included:
 - §39A-3, Designation/Uses Permitted, to allow 25% of the parking and loading required to serve the non-residential use to be located in the Residence Zone on corner lots in the IHZ.
 - §39A-14, Parking, to allow parking and loading between the Non-Arterial street and the closest building on a corner lot in the IHZ.
 - §39A-14, Parking, to allow parking and loading between the Arterial street with shorter frontage and the closest building on a corner lot in the IHZ that has frontage on two Arterial Streets.
 - Amended §39A in December 2013, pursuant to Text Amendment #663, to require Public Waterfront Access as defined in §5-2 shall be provided in any IHZ site adjacent to the Saugatuck River.
 - Currently pending, submitted in December of 2015, Text Amendment #707 proposes to modify portions of §32-8, Excavation and Filling of Land, and to modify portions of §39A.
 - Currently pending, submitted in December 2014, Map Amendment #708, requesting rezoning of property located at 785 Post Road East from Residence A/GBD to Residence A/GBD-IHZ. Additionally in December 2014, Rick Redniss on behalf of 1141 Post Road East, LLC, submitted Map Amendment #709, requesting rezoning of property located at 1141 Post Road East from Residence A/GBD to Residence A/GBD-IHZ. The Planning and Zoning Commission is reviewed Text Amendment #707 at a public hearing on January 14, 2016 and continued the hearing to February 11, 2016

RECENT PROJECTS

The Planning and Zoning Commission has approved the creation of seven (7) affordable accessory apartments since 2007.

A development project at 19 Indian Hill/3 Bradley Lane/86 Saugatuck Avenue was approved by the Planning and Zoning Commission in November 2007 which allowed for the construction of 20 multifamily units with 4 units being affordable per the State Statutes. The four (4) affordable units are sold to families whose income does not exceed 80% of the state median income.

A redevelopment project at 575 Riverside Avenue was approved by the Planning & Zoning Commission in February 2007 and allowed for the construction of 4 affordable units to be rented to families whose income does not exceed 80% of the state median income.

A redevelopment project at Hidden Brook/Sasco Creek (1655 Post Road East) was approved by the Commission on 9/6/12 and will allow for the construction of twenty-one (21) new affordable units.

A Special Permit/Site plan application was approved on 12/4/08 for development of the Hale's Court site. The project constructed 38 new units for rent.

A redevelopment project at 0 Church Lane was approved by the Planning & Zoning Commission on 8/15/13 and will allow for the construction of 5 affordable units to be rented to families whose income does not exceed 80% of the state median income. The project is under construction.

The first IHZ development was approved in February 2015 for property at 1135 Post Road East, pursuant to Res. #14-053 involving residential and non-residential development including construction of a building for a Bank with Drive Through and Office Use, a building for Retail Use, and four (4) residential buildings consisting of a total of twelve (12) dwelling units (of which 2 are affordable dwelling units). This project is currently under construction.

Currently pending, submitted in December 2014, Map Amendment #708, requesting rezoning of property located at 785 Post Road East from Residence A/GBD to Residence A/GBD-IHZ. Additionally in December 2014, Rick Redniss on behalf of 1141 Post Road East, LLC, submitted Map Amendment #709, requesting rezoning of property located at 1141 Post Road East from Residence A/GBD to Residence A/GBD-IHZ. The Planning and Zoning Commission is scheduled to review Map Amendment #708 and Map Amendment #709 at a public hearing on January 14, 2016.

For more information on see attached spreadsheet entitled, 2014 Affordable Housing Units, 6/30/15.

As shown, the Planning and Zoning Commission has made strides in opportunities for affordable housing in Westport by approving the creation 81 new affordable units within the last 10 years.

B. State Initiatives

In addition to responding to directives from the local Plan of Conservation and Development, Westport's affordable housing efforts have also been prompted by policies established at the State level. The State of Connecticut established a goal that affordable housing should represent 10% of the total housing inventory in each municipality throughout the State.

The State of Connecticut enacted C.G.S. §8-30g in 1990 that provides a special appeals process to a developer, if a housing development containing a specified minimum amount of affordable housing units is denied by a local land use board. This appeals process is only applicable to those communities that do not meet the 10% affordable housing goal. While some cities and larger communities have met the 10% goal, other communities have not. A list was recently published that identifies those communities in Connecticut that obtained the 10% goal, see attached *List of*

Municipalities Exempt from Affordable Housing Appeals Procedure, prepared by CCM, dated 6/30/15.

The affordable housing inventory in Westport equals 313 units, according to the most recently available data. This represents approximately 3.01% of the total housing inventory (10,065 single and multi-family dwelling units) as listed in the 2000 U.S. Census, see attached memorandum *Affordable Housing Units, document, dated 6/30/15, and Maximum Sale Price of Affordable Units under §8-30g, dated 3/16/15.*

C.G.S. §8-30g allows a moratorium to the appeals process if a community can demonstrate significant progress in meeting the State's goal. Westport does not yet qualify for this process. Westport needs 208 moratorium points to qualify for a moratorium. An analysis has been done by staff that identifies Westport has 118.75 existing moratorium points based upon projects that have received certificates of occupancy (C.O.'s), with a potential total of **170** moratorium points if all, already approved projects, are constructed.

For further clarification on C.G.S. §8-30g and the moratorium process see memorandum *State Moratorium on Affordable Housing (§8-30g (I): State Certificate of Affordable Housing Completion, Moratorium on Applicability of C.G.S. §8-30g to Certain Affordable Housing Applications, revised 4/13/15, available in the file.*

Westport has not yet met the 10% goal or the number of moratorium points required which makes the Town at risk of the appeals process in cases where a development application that includes affordable housing is denied, or an affordable housing development application is approved with such restrictions that the project is no longer viable.

The appeals process outlined in C.G.S. §8-30g is unique as the burden of proof is shifted to the Planning and Zoning Commission to demonstrate the reasons for their decision. To avoid revisions to, or reversal of, a decision, C.G.S. §8-30g specifically requires that the record show:

1. The decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider;
2. Such public interest clearly outweighs the need for affordable housing;
3. Such public interest cannot be protected; and
4. The decision from which the appeal is taken and the reasons given for the decision are supported by sufficient evidence in the record.